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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

Nos. 715 and 716

JAMES M. WRIGHT,

Petitioner,

vs.

UNION CENTRAL LIFE INSURANCE COMPANY.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITIONER'S REPLY BRIEF.

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UNION CENTRAL LIFE INSURANCE COMPANY.

PETITIONER'S REPLY BRIEF.

Ultimate Question.

The sole and only question in this case is whether subsection (n) and (s) of Section 75 of the Bankruptcy Act are still constitutional—whether the *Robert Page Wright* case, 300 U. S. 440, or the *Lowmon* case (C. C. A. 7th), 79 F. (2d) 887, controls as to constitutionality. The question is whether Congress in legislating on the subject of bankruptcies has the power to place *all* of the bankrupt's property, including the *equity or right of redemption,* under the *exclusive jurisdiction* and *control* of a court of bankruptcy—a Federal court sitting as a court of equity.

Argument.

It is with keen regret that we realize that a few of the lower courts seem to be unable to comprehend that Congress, during the depression and recession, is equally concerned with the welfare of the debtor and creditor—unable to comprehend that from now on Congress intends to give equal protection to both debtor and creditor. This in the interest of our Nation's welfare and within the limitations of the Constitution.

We will concede that in the past, Congresses as well as State Legislatures were more concerned with the protection of the creditors than with the unfortunate debtors—but that is the old school of thought. Experience and the self-preservation of this Nation has taught Congress that the homes of a Nation, including its farmers, must be preserved if the Nation is to continue, grow and prosper.

Fortunately—in case of a financial wreck—under the bankruptcy power of the Constitution and the decisions of this Court, Congress has ample power to conserve the estate and protect the mutual rights of both the debtor and creditor. It has power to stay the hand of greed that would wreck and destroy and to salvage the wreckage for the ultimate benefit of both.

Res Judicata.

It is our contention that the *Lowmon* case (C. C. A. 7th) 79 F. (2d) 887, was in fact before this Court and reversed in its decision in the *Robert Page Wright* case, 300 U. S. 440. We come to this conclusion because in the petition for the writ of certiorari in that case one of the reasons set forth in the petition for the writ was that there was a diversity of decisions among the Circuit Courts. The *Lowmon* case was one of these diversities of decisions. It held both sub-

sections (n) and (s) of the Frazier-Lemke act unconstitutional because, as stated in the opinion, these two sections extended the right of redemption beyond the period fixed by the State.

Justice Brandeis in the opinion of this Court in the *Robert Page Wright* case says:

> "The question for decision is whether section 75, subsection (s), of the Bankruptcy Act, as amended by the new Frazier-Lemke Act, August 28, 1935, c. 792, 49 Stat. 943-945, is constitutional. In this case, the Federal court for western Virginia (see In re Sherman, 12 Fed. Supp. 297) and the Circuit Court of Appeals for the Fourth Circuit (85 F. (2d) 973) held it invalid. Like decisions have been rendered in other circuits. Lafayette Life Insurance Co. *v.* Lowmon, 79 F. (2d) 887 (Seventh Circuit); United States National Bank of Omaha *v.* Pamp, 83 F. (2d) 493 (Eighth Circuit). In the Fifth Circuit the legislation was sustained. Dallas Joint Stock Land Bank *v.* Davis, 83 F. (2d) 322. *Because of this conflict and the importance of the question, we granted certiorari.*"

In other words, the *Wright* case came before the Supreme Court after the Frazier-Lemke Act had been held unconstitutional by the Circuit Courts of Appeals of the Fourth, Seventh and Eighth Circuits and held constitutional by the Circuit Court of Appeals of the Fifth Circuit. Justice Brandeis said: "*Because of the conflict and the importance of the question, we granted certiorari.*"

The court by this statement must have meant that it granted the writ in order to remove the conflict. The *Lowmon* and the *Pamp* cases were the cause of the conflict. To say that the question in the *Lowmon* and *Pamp* cases was not before the Supreme Court is absurd. The intent of the Supreme Court was to restore uniformity in the decisions and that could not be accomplished except by removing the

conflict of opinions. These, with other cases, were the cause of the conflict. *The holding in the Lowmon, Pamp and other cases had to be rejected in order to bring about uniformity. They were rejected by being reversed.* The Supreme Court upheld the *Davis* case decided by the Circuit Court of Appeals of the Fifth Circuit, 83 F. (2d) 322.

How could the Supreme Court have held the Frazier-Lemke Act, subsection (s) or any other part of the Act constitutional *with the Lowmon and Pamp cases unreversed?* It is true the *Lowmon* case was not the case appealed to the Supreme Court, but it was in fact reversed by the Supreme Court. *The Supreme Court did not approve the law as stated in the Lowmon case or the Pamp case. It condemned it by holding that the Act was constitutional. It ironed out the conflict.*

In addition may we suggest that in the *Robert Page Wright* case Judge Parker of the Fourth Circuit based his decision, in holding the new Frazier-Lemke Act unconstitutional, largely upon the *Lowmon* and the *Pamp* cases. In other words, the *Pamp* case followed the erroneous decision of the *Lowmon* case and Judge Parker followed the erroneous decisions of both of these cases, and all three Circuit Courts were reversed by the Supreme Court when it held the Frazier-Lemke Act constitutional in the *Robert Page Wright* case.

May we also suggest that in the *Wright* case, counsel for respondent, in their brief before the Supreme Court on pages 24 and 25, discussed the *Lowmon* case and the *Pamp* case *and relied upon them as authority that the Frazier-Lemke Act was unconstitutional.* Again, counsel for appellant, Robert Page Wright, in their brief on pages 59-63, discussed and criticised the decision of the *Lowmon* case and the *Pamp* case.

Respondent in the case at bar forgets that Section 75 of the Bankruptcy Act of 1898, including subsections (n) and (s), must not be confused with State acts. It is an Act passed by the Congress of the United States on the subject of bankruptcy—passed under the grant of power given it by the Federal Constitution. *"Congress shall have power * * * to establish * * * uniform laws on the subject of bankruptcies throughout the United States,"* and *"to make all laws which will be necessary and proper for carrying into execution the foregoing powers, and all other powers, vested by this Constitution in the Government of the United States, or in any department or officer thereof."* (U. S. Constitution, Art. I, par. 8.) Again,

"This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding." Article VI.

The Federal Constitution and laws made in pursuance thereof are the supreme law of the land—not the Constitution or the laws of Indiana. On the subject of bankruptcy, *the Constitution vests full and complete, not only partial, legislative power in Congress. Any State law must give way to the national law. That is the mandate of the Constitution. Wright* v. *Vinton Branch of Mountain Trust Bank*, 300 U. S. 440; *Continental Ill. Nat. Bank and Trust Co.* v. *Chicago, Rock Island and Pacific Ry.*, 294 U. S. 648; *Campbell* v. *Alleghany Corporation*, 79 F. (2d) 947; *Hanover National Bank* v. *Moyses*, 186 U. S. 181; *State* v. *Superior Court of King County*, 45 L. R. A. 177; *Sturges* v. *Crowninshield*, 4 *Wheat.* 122.

Constitutionality.

Just how the court below in the case at bar can still insist that subsections (n) and (s) of Section 75 of the Bankruptcy Act are unconstitutional is more than we can understand. The respondent in its brief rehashes all of the arguments made in the *Robert Page Wright* case. It talks about five rights in Indiana and the laws of Indiana fixing the right of redemption, the relationship of debtor and creditor, apparently forgetting that the relationship of debtor and creditor has nothing to do with the case. The question is whether or not the right or equity of redemption is a property right—is in fact property? If it is then the Federal Court takes jurisdiction.

Respondent should have asked this Court to reconsider its decision in the *Robert Page Wright* case, in which the *Lowmon* case was in fact reversed. We concede that the court may reconsider the constitutionality of Section 75. But we do not believe that there is any occasion for it. *We feel that that decision is sound and that Section 75 is still constitutional, the erroneous decision of the lower court in the Lowmon case and the case at bar notwithstanding.*

If this Court should reconsider its decision in the *Robert Page Wright* case, then may we suggest to the court that it reread our brief in that case, No. 530, October Term, 1936, because there we answered every argument of the respondent and since the respondent in this case simply rehashes those arguments we feel that our brief in that case answers every argument advanced by the respondent in the present case.

Equity of Redemption.

The right or equity of redemption is a property right. It is property. It has value and Congress intended by the enactment of Section 75 to give the sole jurisdiction of all

the property, including the right or equity of redemption, to the Court of Bankruptcy—a Court of Equity. No one can read subsections (n), (o), (p) and (s) and come to any other conclusion but that Congress intended that the right or equity of redemption should come under the absolute and sole jurisdiction of the Federal courts.

Under Section 75 of the Bankruptcy Act the Bankruptcy Court, sitting as a Court of Equity, can control and does control the period of redemption, the same as any other property right. *When a person becomes a bankrupt, all contracts and obligations are merged into the bankruptcy proceeding, including the equity or right of redemption.* The court assumes full and complete jurisdiction over all of the bankrupt's property.

> "For the court to afford the relief which the section as amended contemplates, it is necessary that the exclusive and paramount jurisdiction of the court over the property of the bankrupt be maintained; and there can be no question but that the provisions of subsections (n) and (o) apply as well to proceedings continued under subsection (s) as to proceedings under the other provisions of section 75. * * * And we do not think that the right to stay proceedings in the State court is precluded because a sale has taken place in foreclosure proceedings if there has been no confirmation of the sale." Bradford *v.* Fahey, 76 F. (2d) 628 (C. C. A. 4th).
>
> "A trustee in bankruptcy takes property in the same condition in which the bankrupt held it." Humphrey *v.* Tatman, 198 U. S. 91. "It is the general rule that the equity of redemption of mortgaged property passes to the trustee, and he may take and retain actual possession of the property. This is true even though the transaction takes the form of a trust deed instead of a mortgage." Gilbert's Collier on Bankruptcy, 4th Edition 1197; In re Jersey Island Packing Co. (C. C. A. 9th), 14 Am. B. R. 689.

"Property is *nomen generalissimum,* and extends to every species of valuable right and interest, including real and personal property, easements, franchises, and other incorporal hereditaments," 179 U. S. 141. "The right to redeem from a chattel mortgage is a right of property passing to the trustee of the bankrupt mortgagor." James B. Drake & Sons *v.* Nickerson, 121 A. 86.

"The right to redeem from a mortgage being a right possessed by one person of enforcing a claim against another, is "property" as respects the due process of law clause in the Constitution." Mooney *v.* Miller, 195 N. Y. S. 437. "The right of redemption from mortgage foreclosure as given by Code 1907, Sec. 5746, is transferable either before or after foreclosure and gives a property right under definition of property as right to possess, use, enjoy, sell and dispose of a thing." Petterson *v.* Holmes, 202 Ala. 115.

"The jurisdiction of bankruptcy court attaches on filing of petition for agricultural compositions and extension, and thereafter power of bankruptcy court is exclusive and paramount as to all bankrupt's property not in possession of some other court (Bankr. Act, Section 75 (n). * * * A farmer's proceedings for agricultural compositions and extensions were not dismissible as against mortgages who, after confirmation of foreclosure sale, held certificates of purchase, where farmer was still in possession of land, deeds had not been issued to purchasers, and District Judge had entered order approving filing of petition, and, if there was good reason why land could not be administered in bankruptcy court, Bankruptcy Act provided a remedy to true owner (Bankr. Act Sec. 75 (n-p), 11 U. S. C. A., Sec. 203 (n-p)." Syllabus. Wilcons *v.* Penn Mut. Life Ins. Co. et al. (C. C. A. 10th C.) 91 F. (2d) 417; Heldstab *v.* Equitable Life Assur. Soc. of U. S. et al. (C. C. A. 10th C.) 91 F. (2d) 655.

"We conclude that as the sale had not been confirmed at the time of filing the petition, appellant's equity of redemption had not been barred, and that it constituted

"property" which was subject to the jurisdiction of the Federal court under subsection (n). The foreclosure proceedings and the proceedings for sale thereunder were therefore stayed by the operation of subsection (o). * * *

"The debtor was clearly entitled to a restraining order to prevent the sale being confirmed and his equity of redemption being cut off before the proceedings in the Federal court had been consummated. Hence the injunction should not have been dissolved.

"The court is informed that subsequent to the vacation of the restraining order the sale was confirmed. This fact does not appear in the record; but in any event, under the mandatory provisions of subsection (o), all proceedings in the foreclosure action, including sale, were stayed after the filing of the debtor's petition, and were of no effect." Hoyd *v.* Citizens Bank of Albany Co., 89 F. (2d) 105.

"Upon adjudication of bankruptcy, title to all the property of the bankrupt, wherever situated, vests in the trustee as of the date of filing the petition in bankruptcy. The bankruptcy court has exclusive jurisdiction, and that court's possession and control of the estate cannot be affected by proceedings in other courts, State or Federal. Isaacs *v.* Hobbs Tie & T. Co., 282 U. S. 734, 737, and cases cited. Such jurisdiction having attached control of the *administration of the estate cannot be surrendered even by the court itself. Id.*, 739. *'The filing of the petition is a caveat to all the world and in fact an attachment and an injunction.'* May *v.* Henderson, 268 U. S. 111, 117." Gross *v.* Irving Trust Co., 289 U. S. 342.

In Re Argyle versus In re Lowmon.

The Circuit Court of Appeals of the 7th Circuit has been on both sides of the fence in passing upon the jurisdiction of Federal courts during the period of redemption after the sale under foreclosure proceedings. In passing upon Sections 77 and 77B of the Bankruptcy Act, relating to rail-

road and corporation reorganization, that court has given a very liberal construction to Acts of Congress. In construing Section 77B it held that the right or equity of redemption was a property right affecting a remedial right and therefore came under the jurisdiction of the Federal Courts. It took property from a receiver under a State court and gave it to the trustee in bankruptcy.

But in passing upon Section 75 of the same Act, relating to agriculture, that Court lost its liberalness and gave a strict construction—a construction inconsistent with its liberal construction of Sections 77 and 77B. It there held that as far as Section 75 extended the period of redemption—it was unconstitutional. It forgot that the right of redemption was a property right. It forgot that extending the period of redemption affected a remedial right and not a substantive right. We cannot concede that under the Bankruptcy Act a liberal construction should be given for railroads and other corporations and a strict construction for human beings—farmer-debtors.

> "It must be conceded that the right of redemption is a property right and is therefore an asset. This appellants do not deny, but they contend that section 210 of the Illinois Revenue Act, which was in force at the time of the tax sale, limited the redemption period to two years, and that that section was adopted by section 253, *supra*, under which the sale was made, and that, therefore, the amendatory Act of July 13, 1933, *supra*, did not operate to extend the redemptive period. We think that conclusion is not sound. The amendatory act merely affected a *remedial right*, and its enactment was clearly within the power of the Legislature. * * * We hold, therefore, that the bankrupt's right of redemption had not expired when the petition for reorganization was filed, and that that right existed under amended section 210 of the Illinois Revenue Act until the execution of the deed. * * *

"It was here conceded that since the issuance of the certificate of sale to Cook County, the relation of debtor and creditor no longer existed, with respect to the judgment for taxes, between it and the bankrupt and its trustee. Since that time the bankrupt had a mere right of redemption, and the trustee has no greater right." *In re* Argyle-Lake Shore Bldg. Corporation, 78 F. (2d) 491.

"The constitutional grant of authority is not conditional nor limited, save that its laws be uniform throughout the United States. * * *

"Surely, we are justified in giving to the amendment a liberal construction, one that is consonant with the purposes of this remedial legislation. * * * How could a plan of reorganization be perfected unless the court restrained creditors and lienholders from proceeding in a manner which would defeat the consummation of said plan?" Continental Illinois Nat. Bank & Trust Co. *v.* Chicago, R. I. & P. Ry. Co., 72 F. (2d) 443, (C. C. A. 7th).

"Our conclusion is that the restraining order is an exercise of authority on the part of the court which was necessary to the effective use of the powers expressly conferred by Congress through this amendment. In short, it was the exercise of a power which was incident to those expressly conveyed by Congress to the court. The proceeding involved no adversary contest *but merely the pursuit of a remedy.*" Continental Illinois Nat. Bank & Trust Co. *v.* Chicago, R. I. &. P. Ry., 72 F. (2d) 443, (C. C. A. 7th).

"It would seem from these decisions, rather clear, that the highest court of Illinois defines the estate of the owner of an equity of redemption both before and after sale, until the time of redemption expires, as exactly the same. * * * Consequently, I conclude that the equity of redemption of the bankrupt in this case was a property right which in the ordinary course of procedure he would have lost had he not filed his petition in this court prior to the expiration of the period provided.

"Subdivision (n) of section 75 of the Bankruptcy Act (11 U. S. C. A. Sec. 203 (n) provides that the filing of petition for relief under section 75 shall subject the farmer and his property wherever located to the 'exclusive jurisdiction of the court.' * * *

"It follows therefore that, when this debtor, in pursuance of the act of Congress giving him the right so to do, filed his petition that jurisdiction of all his property be taken over by this court, it became the court's duty, under the mandate of Congress, to exercise 'exclusive jurisdiction.' Such is the law as made by the Congress, and that it is within the constitutional power of Congress the Supreme Court has clearly stated in Isaacs *v.* Hobbs Tie & Timber Co., *supra*, and Gross *v.* Irving Co., *supra.*" *In re* Duffy, 9 F. Supp. 166, (D. C. Ill.). See also *In re* Rank 9 F. Supp. 171, (D. C. Ill.).

Power to Extend Period of Redemption.

The power to extend the period of redemption or the period in which to confirm a sale has always existed in a court of equity. A foreclosure proceeding is a proceeding in equity. A bankruptcy proceeding is a proceeding in equity. Courts of equity did not only originate the right of redemption, but have always protected it. They have extended the period under certain circumstances. They have on occasions, to avoid harshness, extended the period without legislative sanction.

"He (the purchaser) is entitled to only his money, with interest * * * even though he gets it a few days before or after the year of redemption. He has no right to avail himself of the law to get something for nothing, or to speculate on the misfortunes of his debtor.

"To mitigate the asperities of the law and to grant relief against forfeitures, penalties, accidents, and mistakes,—this has always been the special function and the duty of the courts of equity." Wade *v.* Major, 36 N. D. Reports 331.

During this depression and recession some twenty-six State Legislatures, at one time or another, granted *moratori* and extended the period of redemption. This in spite of the prohibition by the Federal Constitution that *"No State shall pass any * * * law impairing the obligation of contracts."* Yet these laws have been held constitutional by this Court under the police power of the States and for the further reason that such laws *simply affected remedial rights* and did not impair substantial rights. *Home Bldg. & Loan Association* v. *Blaisdell,* 290 U. S. 398.

It is conceded by all that Federal laws enacted under a constitutional grant of power are *"the supreme laws of the land; and the Judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding."*

Under section 75 of the Bankruptcy Act, Congress gave full and complete power over all of the bankrupt's property to the courts of bankruptcy. Under that section foreclosure of mortgages may be stayed. Executions and evictions by judgment creditors may be stayed. The enforcement of all debts, secured or unsecured, may be stayed for a period of three years under the control of the court. By the express language of the Act the period of the right or equity of redemption may be stayed. *These are all but remedial rights.* It is not the taking of property and we maintain that all have had the sanction of this Court. *Bradford* v. *Fahey,* 76 F. (2d) 628, (C. C. A. 4th); *Bank* v. *Pamp,* 77 F. (2d) 9.

> "We have seen that the power of Congress over the subject of bankruptcy is total and absolute, with the single limitation, that the laws must be uniform; * * * The exception itself in favor of these rights shows that Congress intended to occupy the whole ground. Everything which is not excepted passes under the act. The rights themselves, therefore, being the only matters which are excepted, the mode of enforcing those

rights by an application to the State courts is not saved. Not being excepted, it is gone. If Congress had intended that the State courts should retain their jurisdiction over mortgages, and have the power of foreclosing them, the law would have said so. * * * But the bankrupt is obliged to make a return of all his property of every kind, under the penalty of losing the benefit of the law. He must include his mortgaged property, and the whole must be adjudicated by one head." Houston et al. *v.* City Bank of New Orleans, 6 How. 486.

"The title and right to possession of all property owned and possessed by the bankrupct vests in the trustee as of the date of the filing of the petition in bankruptcy. * * * When this jurisdiction has attached the court's possession cannot be affected by actions brought in other courts. White *v.* Schloerb, 178 U. S. 542; Murphy *v.* Hofman Co., 211 U. S. 562; Dayton *v.* Stanard, 241 U. S. 588. This is but an application of the well recognized rule that when a court of competent jurisdiction takes possession of property through its officers, this withdraws the property from the jurisdiction of all other courts which, though of concurrent jurisdiction, may not disturb that possession; * * * Thus, while valid liens existing at the time of the commencement of a bankruptcy proceeding are preserved, it is solely within the power of a court of bankruptcy to ascertain their validity and *amount and to decree the method of their liquidation. Ex parte* City Bank of New Orleans, 3 How. 292; Houston *v.* City Bank of New Orleans, 6 How. 486; Ray *v.* Norseworthy, 23 Wall. 128; *In re* Wilka, *supra;* Nisbet *v.* Federal Title & T. Co., 229 Fed. 644. The exercise of this function necessarily forbids interference with it by foreclosure proceedings in other courts, which save for the bankruptcy proceeding would be competent to that end." Isaacs *v.* Hobbs Tie & T. Co., 282 U. S. 734.

"State laws in conflict with laws of Congress on subject of bankruptcies are suspended, but only to the

extent of actual conflict with system provided by the Bankruptcy Act." Chicago Title & Trust Co. *v.* Forty-One Thirty-Six Wilcox Bldg. Corporation, 58 S. Ct. 125.

"The stay under judicial discretion, as to enforcement of claims provided by the statute relative to agricultural extensions and compositions in the bankruptcy court, does not take property without due process and is constitutional. Bankr. Act. Sec. 75 (o), 47 Stat. 1471-1473, 11 U. S. C. A. Sec. 203 (o)." Adair *v.* Bank of America Nat. Trust & Savings Ass'n, 58 S. Ct. 594.

"The provisions of the statute, relating to agricultural compositions or extensions in the bankruptcy court for the exercise by the court of such control over the property of the farmer as the court deems in the best interests of the farmer and his creditors, look toward the maintenance of the farm as a going concern and afford authority in a proper case for the continuance of the operations of the farm. Bankr. Act. Sec. 75 (e, n), 47 Stat. 1471-1473, 11 U. S. C. A. Sec. 203 (e, n)." Adair *v.* Bank of America Nat. Trust & Savings Ass'n, 58 S. Ct. 594.

Relationship of Debtor and Creditor.

The court below seems to be confused because it claims that after mortgage foreclosure sale the relationship of debtor and creditor no longer exists. May we ask in all frankness what that has to do with the case? The question is not the relationship of debtor and creditor. The question is, is the right or equity of redemption a property right? If so then the bankruptcy court has jurisdiction.

"The purchaser at a mortgage foreclosure sale does not become the absolute owner of the property. At best he gets but a qualified title that may or may not ripen into a title. The equitable title, and in many States the legal title, remains in the mortgagor." 19 R. C. L. Right and Equity of Redemption Secs. 296 and 298, pages 500-501. *In re* Kalina, 9 F. Supp. 170 and *In re* Argyle-Lake Shore Bldg., 78 F. (2d) 491.

The court deals with the farmer-debtor's property, first, with a view of conserving it and rehabilitating the farmer, and secondly, with a view of conserving it for the creditor. The Court takes complete control of all the debtor's property *regardless of any relationship of creditor and debtor.* Congress directs the court in specific language to take control of the period of redemption and to extend it. The passing of the bankrupt's property into the hands of the court does not rest upon the relationship of debtor and creditor. *It has nothing to do with that. The question is not whether the relationship of debtor and creditor exists, but rather, what is property, and the right of redemption is property and it passes to the court.*

Protects Purchaser.

It is argued that since some State courts have held that after sales the relationship of debtor and creditor no longer exists, a purchaser at a foreclosure sale would be deprived of his property if the period of redemption were extended. It is stated that his property would have to be resold.

That is an inaccurate statement and our answer is that the purchaser in such a sale is only a qualified or prospective owner. He is not the owner of the property. *It belongs to the bankrupt.* Subsection (n) in plain words says, "In all cases where, at the time of filing the petition, the period of redemption has not or had not expired, or where a deed of trust has not or had not become absolute, or where the sale has not or had not been confirmed, or where deed had not been delivered, the period of redemption *shall be extended or the confirmation of sale withheld for the period necessary for the purpose of carrying out the provisions of this section.*"

There is no necessity for an additional sale. All that this Act does is to *extend the time of redemption for three*

years, or such time as the farmer may need to refinance himself within the three years, and when he does that he will have to pay the purchaser the amount that he bid the property in for.

It is, however, argued that during this period the purchaser would not be able to receive the rent. This is another erroneous conclusion, because the Act itself contemplates that in this case the purchaser shall receive the rental. He has a qualified ownership in the land and therefore would be entitled to the rental.

The Bankruptcy Court is a court of equity. Under its equitable jurisdiction the court has ample power and opportunity to carry out the express intent of Congress under equitable terms. There is no room here for quibbling over technicalities. The plain intent of subsections (n) and (s) of section 75 is that the purchaser, at a redemption sale, should be treated the same as the mortgagee and is entitled to the rental. That appears plainly by reading subsections (n) and (s) together and by reading the Judiciary Committee report.

Purchaser No Saint.

There is nothing sacred about a purchaser at a foreclosure sale. He generally is looking for a bargain at the expense of the mortgagor. In some localities he is even looked upon with disfavor as one who profits by the misery and misfortune of others. When he purchases at a mortgage foreclosure sale, he is presumed to know not only the laws of his State, but the laws of the United States—the bankruptcy laws. He is presumed to know that the Federal Constitution and laws supersede State constitutions and laws. Preferential sales or gratuitous and fraudulent transfers made within four months can and have been set aside, State law or not State law. So can the period of redemption be extended by Congress through a court of bankruptcy regardless of State law. *In re* Dickinson, 9 F. Supp. 227.

Side Issue.

Since this case reached this Court an attempt is being made by Respondent to inject a side issue. It now claims that Appellant did not have title to 200 out of the 280.31 acres of land, here in question, at the time of filing his petition under section 75. It forgets that the question of title is not before this Court because it never was raised or tried in the lower court. The Petitioner included the 200 acres of land in his schedule and under oath stated that he was the owner of the 200 as well as of the 80.31 acres. The record shows conclusively that he has at all times had and now has possession, lives on and farms all of this land and under oath claims ownership. R. 2-9.

Respondent never raised the question of title in the lower court. Therefore, it is in no position to raise it in this Court. The record shows that the question of title was never raised or tried in the lower court. But, says Respondent, there were deeds on record by which Appellant apparently deeded 200 acres out of the 280.31 acres of this land to members of his family and that there are quit claim deeds by these same members of his family deeding said land back to Appellant. Appellant under oath in his amended schedule claims title and since that issue was not raised in the lower court it is not now before this Court. R. 2-9.

If Respondent had raised the issue of title in the lower court he perhaps would have discovered that Appellant made these deeds to his children to take the place of a will. Respondent would have discovered that there never was any consideration for these deeds and that the deeds in fact were not intended as a conveyance at all, but simply as an instrument to take effect after death.

It is not necessary for us to discuss this subject further. This issue was not raised in the District Court nor in the

Circuit Court of Appeals. The decision of the Circuit Court of Appeals is not on the question of title. In fact, the Circuit Court of Appeals admits that Petitioner, at the time he filed his petition, had the right to redeem this property if subsections (n) and (s) of section 75 were constitutional. The lower court went astray on that question in the *Lowmon* case and it followed the *Lowmon* case in the present case and repeated its error in spite of the decision of the Supreme Court to the contrary in the *Robert Page Wright* case.

In its opinion the lower court says:

> "Hence, at the time of the enactment on August 28, 1935, the only interest that debtor had in the mortgaged property was a right to redeem the 200 acre tract, provided he did so on or before July 20, 1936. Indeed, that was all the interest he had when he filed his amended petition on October 11, 1935, unless the amendment of August 28, 1935, operated to extend his right of redemption.
>
> "In the *Lowmon* case we particularly discussed subsection (n) of Section 75, and held it unconstitutional to the extent that it authorized an extension of the period of redemption. We also referred to the first sentence in subsection (s) (2) of Section 75 which in effect commands the court to carry out that authorization by extending the time of redemption for a period of three years, and we held that portion of it unconstitutional. In this sense our decision was like those referred to in the Fourth and Eighth Circuits, and unlike the one in the Fifth Circuit, for we held a portion of subsection (s) unconstitutional."

Conclusion.

In conclusion may we state that cases under the Bankruptcy Act prior to the enactment of Sections 73, 74, 75, 76, 77 and 77B are no guide or authority. This because in the sections just mentioned the power of the bankruptcy

court and the method in dealing with the bankrupt's estate are largely increased. The courts must now be guided by the Bankruptcy Act as amended by these sections and not by decisions that construed the act prior to this action of Congress.

During the depression and recession Congress—legislating in the interest of the Nation—saw fit to pass the sections referred to. It did this because it felt they were essential for the preservation of the Nation. This Court has approved that legislation and has given it a broad and liberal interpretation so as to effectuate the intent of Congress within Constitutional limitations. *Continental Ill. Nat. Bank and Trust Co.* v. *Chicago, Rock Island, and Pacific Ry.*, 294 U. S. 648; *Robert Page Wright* v. *Vinton Branch of Mountain Trust Bank*, 300 U. S. 440; *Adair* v. *Bank of America National Trust and Savings Association*, 303 U. S. —.

Respectfully submitted,

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